(2-A)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR.

CR. APPEAL NO. 1039 /2001.

APPELLANT :- YUDHISHTHIR SON OF GANGA RAM AGED ABOUT-21 YEARS , RESIDENT OF VILLAGE KOEDERA P.S. MAHAMAYA : DISTRICT DURG (C.G.).

VERSUS

RESPONDENT : STATE OF CHHATTISGARH.

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.1039 **सन् 200 /**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH : BILASPUR

DIVISION BENCH : HON'BLE SHRI L.C. BHADOO AND HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.1039 of 2001

Appellant : Yudisthir

Versus

Respondent : State of Chhattisgarh

Mr. N.S. Dhurandhar, Counsel for the appellant.
Mr. U.N.S. Deo, Addl. Public Prosecutor for the State/respondent.

O R A L JUDGMENT
(23-11-2006)

Per L.C. Bhadoo, J

This appeal has been directed against the judgment of conviction and order of sentence dated 5.9.2001 whereby learned Special Judge, Durg after holding the accused/appellant guilty for commission of the offence under Sections 302, 460 of the Indian Penal Code, sentenced him to undergo imprisonment for life and ten years respectively.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. Prosecution case in brief is that deceased Parasram gave Dehati First Information (Ex.P/5, P/8) on 23.3.1999 while he was under treatment in Shahid Hospital, Rajhara to Parsuram Tripathi (PW-15), Head Constable, Police Station – Mahamaya, to the effect that in the previous night he was sleeping in the verandah of his house whereas his son and wife were sleeping in the room. At about 1.00 a.m. Yudisthir who used to call him sorcerer, entered the house by scaling the wall and started attacking him with knife on his stomach, on which he woke up, accused started running away. He was chased but he escaped. Blood was oozing out of the injury, therefore, his son wrapped a towel on his stomach and kept him in the house in the night. On the next morning he was brought to the hospital for treatment. Thereafter, a dying declaration (Ex.P/7,P/22) was recorded by Dr. V.S. Rathiya (PW-9). Based on Dehati Nalishi, First Information Report was registered for commission of the offence under Section 326 and 307 of the IPC. The investigating officer took up the investigation. While undergoing the treatment Parasram succumbed to the injuries in the hospital. Merg intimation (Ex.P/20) was sent by Dr. V.S. Rathiya (PW-9) to the police station –

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Dallirajhara, on which the offence was converted into Section 302 of the IPC. After giving notice (Ex.P/5) to the Panchas, inquest (Ex.P/6) was prepared. Site plan (Ex.P/4) of the place of occurrence was prepared by the investigating officer. Clothes of the deceased i.e. one white Dhoti and one bed sheet were taken into possession under Ex.P-8. While in police custody, the accused gave memorandum (Ex.P/9) regarding the place where he had concealed the knife and in pursuance of that, the knife was taken into possession under Ex.P/10. Papers (Ex.P/12, Ex.P/13, Ex.P/15, Ex.P/16, Ex.P/17, Ex.P/18 and Ex.P/19) regarding the treatment given to the deceased in the hospital were taken into possession. The recovered clothes and knife were sent for chemical examination to the Forensic Science Laboratory from where report (Ex.P/26) was received. The postmortem on the body of deceased Parasram was conducted by Dr. P. Dhanendra (PW-14) who submitted his report Ex.P/27. He opined that the cause of death was severe hemorrhage and shock due to rupture of various parts of gastro intestinal track and mode of death was homicidal in nature. After completion of usual investigation charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Balod who in turn

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

committed the case to the Sessions Judge, Durg from where learned Special Judge received the case on transfer for trial.

3. Prosecution in order to establish the charge against the accused examined 15 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he stated that he is not aware of the material appearing against him in the prosecution evidence, he is innocent and has been falsely implicated in the crime and the witnesses have deposed against him on account of animosity as there was a dispute with Parasram in connection with temple.

4. Learned Special Judge after hearing counsel for the respective parties and going through the record, convicted and sentenced the accused as aforementioned.

5. We have heard Mr. N.S. Dhurandhar, counsel for the accused/appellant and Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

6. Mr. Dhurandhar, has not disputed homicidal death of Parasram. Apart from that PW-1 Ankalu, son of the deceased, has stated that accused Yudisthir attacked his father with knife in the night. PW-2 Sultan Singh, has also corroborated the above evidence. Dr. V.S. Rathiya (PW-9) has stated that Parasram was given treatment by him, on 23.3.1999 at about 10.30 a.m. he recorded dying declaration (Ex.P/22) of Parasram in the hospital in which he stated that Yudisthir has attacked him with knife. PW-15 Parsuram Tripathi has stated that on 23.3.1999 Parasram was admitted in the hospital. He gave Dehati First Information Report (Ex.P/8). Therefore, in view of the dying declaration made by deceased Parasram, the evidence of Ankalu (PW-1), son of the deceased, evidence of Dr. P. Dhanendra (PW-14) who conducted postmortem on the body of deceased Parasram and stated that cause of death was severe hemorrhage and shock on account of rupture of vital parts of gastro intestinal track and the death was homicidal, it has been established that death of Parasram was homicidal in nature.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

7. As far as involvement of the accused in commission of the crime in question is concerned, there is no ocular evidence in this case. The whole case rests on the circumstantial evidence i.e. oral dying declaration made by Parasram before his son Ankalu (PW-1), written dying declaration (Ex.P/8) made before Parsuram Tripathi as also the dying declaration (Ex.P/22) made before Dr. V.S. Rathiya (PW-9).

8. Learned counsel for the accused/appellant argued that no time has been mentioned in Dehati FIR of Ex.P/8 to ascertain as to when the deceased gave this statement. Similarly, Dr. Vijay Thakur who wrote the answers given by Parasram while recording his dying declaration, has not been examined as a witness, therefore, for the above reasons, this dying declaration cannot be believed.

9. On the other hand, Mr. U.N.S. Deo Additional Public Prosecutor supported impugned judgment of the trial Court.

10. It is settled law that conviction can be based solely on the dying declaration without any corroboration provided that the dying

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

declaration was voluntarily, deceased was in a fit state of mind to give the dying declaration, he was in a position to identify the assailant and truthfulness of such dying declaration inspires confidence of the Court.

11. As far as the argument advanced by counsel for the appellant that Dehati First Information Report (Ex.P/8) given by deceased Parasram to Parsuram Tripathi (PW-15) does not bear the time is concerned, it is true that time has not been mentioned on this report. PW-15 Parsuram Tripathi has stated that on 23.3.1999 Parasram was taking treatment in Shahid Hospital, Rajhara and at that time he recorded the Dehati (Ex.P/8) which bears his signature from 'B' to 'B'. This witness has not been cross-examined on the aspect of time and he has categorically denied the suggestion given by the defence counsel that it is incorrect to say that the report was not given by the deceased. He has further stated that Parasram while giving the statement (Ex.P/8) named the assailant as Yudisthir. At about 10.00 vide Ex.P/24 Parsuram Tripathi requested the doctor (Surgeon) of Shahid Hospital to give the report regarding condition of Parasram, on which Dr. V.S. Rathiya gave the certificate to the effect that patient is

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 8	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

fit to give statement about his injury. The said certificate was given at about 10.10 a.m. Thereafter Dr. Rathiya himself recorded the dying declaration (Ex.P/22) made by the deceased. In the Dehati F.I.R. (Ex.P/8) Parasram has stated that Yudisthir attacked him with knife and as per the postmortem report which was prepared by Dr. P. Dhanendra (PW-14) there were eight stitched wounds on the body of Parasram. In view of the above cogent and clear evidence, merely non-mentioning of exact time of recording Dehati F.I.R. (Ex.P/8) does not make it a suspicious document. Further, the dying declaration (Ex.P/17, P/22) was recorded by Dr. V.S. Rathiya (PW-9) who has stated that the dying declaration was recorded in the hospital at about 10.30 a.m. which bears the signature of deceased from 'B' to 'B'. At that time the deceased was fit to give the statement and he was answering the questions properly. In the cross-examination he has stated that questions No. 1 to 9 were put to Parasram in his own handwriting whereas the answers of the same were written by Dr. Vijay Thakur and at the time of recording of dying declaration son of deceased Ankalu (PW-1) and police personnel were present there. The signature of Dr. Thakur was not obtained. When the questions

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश ७	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

were put by Dr. V.S. Rathiya, the deceased answered all the questions in his presence, which were reduced into writing by Dr. Vijay Thakur and the same were proved by Dr. Rathiya (PW-9). The above dying declaration stands corroborated by Dehati FIR (Ex.P/8) made by deceased Parasram before Parsuram Tripathi (PW-15) and it further stands corroborated by the evidence of PW-1 Ankalu, son of the deceased. Ankalu (PW-1) has stated that in the fateful night he was sleeping inside the room whereas his father was sleeping in the verandah of the house, on hearing the commotion he came out and saw that his father was standing putting his hand on the stomach and was feeling giddiness. His father also chased the assailant and on enquiry his father disclosed that Yudisthir Tetwar has attacked him with knife. Therefore, the above oral dying declaration made before Ankalu also corroborate the dying declaration (Ex.P/22, P/7). Thus, in these circumstances, non-examination of Dr. Vijay Thakur does not make the dying declaration doubtful. Since the questions were put by Dr. V.S. Rathiya and answers given by Parasram were recorded by Dr. Vijay Thakur at the instance of Dr. Rathiya, non-examination of Dr.Vijay Thakur is not fatal to the prosecution case.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 10	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

12. So far as the another point raised by counsel for the appellant that in the dying declaration of Ex.P/22 in reply to question No. 7 by which name of the accused has been written, there is some cutting which creates doubts as to whether Parasram at all took the name of the accused or not is concerned, we have perused the dying declaration (Ex.P/22) and found that after writing 'yes' the first letter of name of the accused 'U' was written which was subsequently cut and full name of the accused was written. Moreover, in Dehalti FIR (Ex.P/8) which was given by the deceased Parasram prior to this dying declaration as also the oral dying declaration made just at the time of incident to his son Ankalu, refers to the name of the accused. Therefore, this cutting was not made in order to implicate the accused.

13. So far as motive of the appellant to commit the crime in question is concerned, it was stated by the deceased in Dehati FIR (Ex.P/8) that the accused used to call the deceased as sorcerer which was objected to by the deceased and that is why the accused came to his house in the night with a knife and attacked him. Therefore, from the above evidence and the cumulative effect of the dying declaration

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(Ex.P/22), oral dying declaration made before Ankalu (PW-1), Dehati FIR (Ex.P/8), it is established that the accused was author of the crime in question. Even the identity of the accused has been consistently disclosed by Parasram before his son Ankalu before the Head Constable Parsuram as also before Dr. V.S. Rathiya (PW-9). Thus all the above facts and evidence are suggestive of the fact that the dying declaration made by Parasram was voluntary and true which establishes the involvement of the accused in the crime in question. No other point has been raised by counsel for the appellant.

14. For the foregoing reasons, we do not find any illegality or infirmity in the impugned judgment of the trial Court convicting and sentencing the accused/appellant for commission of offence under Section 302 and 460 of the IPC.

15. In the result, the appeal being devoid of substance is liable to be dismissed and it is hereby dismissed.

16. Consequently, M.Cr.P.No. 2453/2006 stands disposed of.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.